

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VICTOR LEBRON-CEPEDA,)	
Petitioner,)	C.A. No. 18-374 Erie
)	
v.)	District Judge Susan Paradise Baxter
)	Magistrate Judge Richard A. Lanzillo
B. TRATE,)	
Respondent.)	

MEMORANDUM ORDER

This action for habeas corpus relief was received by the Clerk of Court on December 6, 2018. In his habeas petition, Petitioner seeks relief under 28 U.S.C. § 2241, pursuant to the “savings clause” of 28 U.S.C. 2255(e), which allows a federal prisoner to challenge the validity of his underlying conviction where it “appears that the remedy by [§2255 petition] is inadequate or ineffective to test the legality of his detention.” The petition raises four grounds for relief. Initially, Petitioner challenges the validity of the mandatory restitution portion of his sentence. The remaining three claims for relief raised by Petitioner challenge the execution of his restitution order; however, Petitioner concedes that he has exhausted none of these claims. The petition was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On April 20, 2020, Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”) recommending that the petition be dismissed because the first claim fails to satisfy the requirements of 28 U.S.C. § 2255(e), and the latter three claims were admittedly unexhausted. [ECF No. 13]. In particular, as to the first claim, Judge Lanzillo concluded that Petitioner has failed to claim that he was convicted of conduct that was subsequently decriminalized by a

change in the law, which is the first of two conditions that must be satisfied by a federal prisoner in order to take advantage of § 2255's savings clause under In re Dorsainvil, 119 F.3d 245,251 (3d Cir. 1997) (Id. at p. 6). Petitioner has not filed any Objections to the R&R.

Thus, after *de novo* review of the petition and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 12th day of May, 2020,

IT IS HEREBY ORDERED that the within petition for a writ of habeas corpus is DISMISSED, with prejudice, and the report and recommendation of Magistrate Judge Lanzillo, issued on April 20, 2020 [ECF No. 13], is adopted as the opinion of this Court. As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
United States Magistrate Judge

All parties of record